AMENDED AND RESTATED REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into among Stoughton Riverfront Development, LLC, a Wisconsin limited liability company ("Buyer") and the City of Stoughton Redevelopment Authority, a body corporate and politic (the "RDA"), and the City of Stoughton, a Wisconsin municipal corporation (the "City") (the RDA and the City, collectively, the "Seller"), dated effective as of January 9, 2024~~the date of the last of the parties' signatures hereto~~ (the "Effective Date").

RECITALS:

A. Seller owns fee simple title to an approximately 10.9-acre tract of real estate located in the City of Stoughton, Wisconsin, bounded on the west by Fourth Street, on the east by Seventh Street, on the north by South Street and on the south by the Yahara River, which Seller has marketed for redevelopment (the "Riverfront Site").

B. Buyer desires to purchase a portion of the Riverfront Site from Seller and Seller desires to sell to Buyer such property in accordance with the terms and conditions set forth herein.

C. Buyer and Seller are ~~the~~ parties to that certain Agreement to Undertake Development, dated November 14, 2023, concerning certain property located within the Riverfront Site (the "Development Agreement").

D. Buyer and Seller are parties to that certain Real Estate Purchase and Sale Agreement effective as of November 15, 2023, and wish to replace that agreement with this Amended and Restated Real Estate Purchase and Sale Agreement.

~~D.~~E. The City has approved a certified survey map in substantially the form attached hereto as Exhibit A.

~~E.~~F. On December 28, 2021, in Ordinance No. 0-29-2021, the City approved Planned Development Zoning designation and a General Development Plan ("GDP") for the Riverfront Site. On February 8, 2022, the City approved a Specific Implementation Plan ("SIP") for the Phase 1 Land, sufficient to allow for Buyer's intended development of approximately 74 units of multifamily housing in two buildings on the Phase 1 Land, as generally depicted on the attached Exhibit B (the "Phase 1 Development").

AGREEMENT:

1. Definitions.

~~1.~~(a) Words that are capitalized but not defined in this Agreement shall have the meanings provided in the Development Agreement.

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~~1.~~ "Term Sheet" means~~Agreement to Purchase. Subject to the terms and conditions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller that certain portion of the Riverfront Site, together with all other rights and interests appurtenant thereto, depicted and described as Lot 1 (the "Phase 1 Land") on the draft certified survey map attached hereto as Exhibit A (the "CSM").~~

~~1. Purchase Price. The purchase price (the "Purchase Price") for the Phase 1 Land shall be Four Hundred Thousand and 00/100 Dollars ($400,000.00). The Purchase Price, subject to the adjustments and prorations set forth in Section 8 below, shall be paid by Buyer on the Closing Date by certified or cashier's check or federal wire transfer.~~

~~1. Milestones. Buyer must timely meet the milestones ("Milestone" or "Milestones") set forth in this Section 4. If Buyer fails to timely meet any Milestone, either the RDA or the City may terminate this Agreement by giving written notice of termination to Buyer. Time is of the essence as to each Milestone.~~

~~(d)~~(b) ~~*Term sheet.* By not later than March 1, 2024, Buyer must deliver to the City Finance Director~~ a nonbinding document from Buyer's lender describing the terms and conditions under which the lender would be willing to provide a loan to finance the construction of the Project and the Public Improvements that contain the following information, and that is satisfactory to the RDA and the City in their sole discretion:

(i) Describes the maximum loan to value ratio.
(ii) Describes the lender's equity requirements from borrower, including any limitations on how borrower may satisfy the equity requirements.
(iii) Describes lender covenants.
~~(iv)~~ Describes any deadline or deadlines established by lender. Words that are capitalized but

(iv) ~~*Loan commitment:* By~~ not defined in this Agreement shall have ~~later than June 1, 2024, Buyer must deliver to~~ the meanings provided in the Development Agreement.

~~(e)~~(c) "Loan Commitment" means~~City Finance Director~~ a binding agreement from Buyer's lender to provide a loan to finance the Project and the Public Improvements that contains~~contain~~ the following information~~, and that is satisfactory to the RDA and the City in their sole discretion~~:

(i) Describes the maximum loan to value ratio.
(ii) Describes the lender's equity requirements from borrower, including any limitations on how borrower may satisfy the equity requirements.
(iii) Describes lender covenants.
(iv) Describes any deadline or deadlines established by lender.
(v) Describes any closing conditions established by lender.

2. Agreement to Purchase. Subject to the terms and conditions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller that certain portion of the Riverfront Site, together with all other rights and interests appurtenant thereto, depicted and described as Lot 1 (the "Phase 1 Land") on the draft certified survey map attached hereto as Exhibit A (the "CSM").

3. Purchase Price. The purchase price (the "Purchase Price") for the Phase 1 Land shall be Four Hundred Thousand and 00/100 Dollars ($400,000.00). The Purchase Price, subject to the adjustments and prorations set forth in Section 8 below, shall be paid by Buyer on the Closing Date by certified or cashier's check or federal wire transfer.

~~( )~~ Milestones. Buyer and Seller must meet the milestones ("Milestone" or "Milestones") set forth in this Section 4. If any Milestone~~*Marketing progress and reports.*~~

4. ~~Within 30 days after this Agreement~~ is not timely met, then Buyer, the RDA or the City may terminate this Agreement by giving written notice of termination to the other~~executed by all~~ parties. Time is of the essence as to each Milestone.

(a) *Canvassing and Reporting*.

(i) By 4:00 PM on January 10, 2024, Buyer must provide documentation to the City Finance Director demonstrating~~, that is satisfactory to the RDA,~~ that 360 Homes LLC has initiated the following ~~marketing~~ activities relating to the Project:

~~a. Opened a Entry into the Realtors Association Multiple Listing Service;~~

~~b.~~a. ~~Set up~~ storefront project~~marketing~~ center in a commercial building on Main Street in the City of Stoughton, including flyers, video monitor, layout boards, and other marketing materials;

~~c.~~ Directed outreach~~Direct marketing~~ to select brokers within a geographic radius of 25 miles centered at the City of Stoughton, focusing on high producing agents, agents active in condominium sales and agents ~~.~~

~~d.~~b. ~~Direct marketing to select brokers~~ active in Stoughton sales;

~~e.~~c. Provided for "by appointment"~~Open house~~ hours at the storefront project~~marketing~~ center.

d. Created and activated a website to provide current Project details and to invite buyers and brokers to participate in a survey regarding the Project.

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~~(iii)~~(ii) ~~Beginning with the first regular RDA Board meeting after this Agreement is executed by all parties, and continuing until Buyer delivers a loan commitment to the City Finance Director or June 1, 2024, whichever is sooner, one~~ or more representatives of 360 Homes

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LLC must attend the regular RDA meetings in January and February of 2024 and describe their canvassing efforts and interim results ~~of the RDA Board and provide a status report~~ relating to the Project, including ~~that includes~~ at least the following information:

a. The overall number of inquiries by interested parties;~~.~~
b. The number of buyers and brokers who have completed a survey regarding the Project;~~registered.~~
c. The number of 1, 2~~,~~ and 3 bedroom units sought by potential buyers;~~.~~
d. Aggregated, anonymized demographic information describing people interested in purchasing a unit within the Project~~parties~~, including age groups~~group~~ and number of occupants~~family size~~.

(iii) By not later than March 6, 2024, Buyer must deliver to the City Finance Director a report of the data obtained from canvassing, and information from Buyer's lender regarding when the lender may be able to provide a Term Sheet and a Loan Commitment (collectively the "March Report"), that is satisfactory to the RDA in its sole discretion.

(iv) By not later than March 14, the RDA shall review the March Report and determine whether the information in the March Report is or is not satisfactory to the RDA, in its sole discretion. If the RDA determines that the March Report is satisfactory, then Buyer shall be deemed to have satisfied the milestone requiring delivery of a satisfactory March Report. If the RDA determines that the March Report is not satisfactory, then Buyer shall be deemed to have not satisfied the milestone requiring delivery of a satisfactory March Report.

(v) By May 14, 2024, Buyer and Seller shall agree, in writing, upon the deadlines by which Buyer must deliver a Term Sheet and a Loan Commitment pursuant to Sections 4 (b) and (c) of this Agreement, and by which the contingencies in Section 5 below must be satisfied (the "Contingency Deadline). If Buyer and Seller do not execute an agreement specifying such deadlines by May 14, 2024, then either Buyer, the City or the RDA may terminate this Agreement by giving written notice of termination to the other parties to this Agreement.

(b) By not later than the deadline agreed to pursuant to Section 4 (a) (v), above, Buyer must deliver a Term Sheet to the City Finance Director that is satisfactory to the RDA in its sole discretion. If the Term Sheet is not satisfactory to the RDA, then the RDA or the City may terminate this Agreement by giving written notice of termination to Buyer.

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The RDA shall have not less than 30 days after the Term Sheet is delivered to determine whether the Term Sheet is satisfactory to the RDA.

(c) By not later than the deadline agreed to pursuant to Section 4 (a) (v), above, Buyer must deliver a Loan Commitment to the City Finance Director that is satisfactory to the RDA in its sole discretion. If the Loan Commitment is not satisfactory to the RDA, then the RDA or the City may terminate this Agreement by giving written notice of termination to Buyer. The RDA shall have not less than 30 days after the Loan Commitment is delivered to determine whether the Loan Commitment is satisfactory to the RDA.

~~(b)~~(d) By not later than May~~By not later than March~~ 1, 2024, Buyer must deliver to the City Finance Director a determination by the Wisconsin Economic Development Corporation ("WEDC") that Buyer has submitted a complete application for the Brownfield Grant (defined below).

~~3.~~5. Contingencies.

(a) Each party's respective obligation to consummate the purchase and sale transaction contemplated by this Agreement is contingent upon satisfaction of all of the following (collectively, the "Contingencies") no later than the date agreed to pursuant to Section 4 (a)(v), above,~~August 1, 2024~~ (the "Contingency Deadline"):

(i) approval by the City of Stoughton Common Council and the RDA of a development agreement (the "Agreement to Undertake Development") attached as Exhibit C, and delivery to the City of the surety required by Section B.1(l) of the Development Agreement;

(ii) approval by the City of Stoughton Common Council (and the Joint Review Board, where required) of any resolutions, boundary amendments, project plans or other items necessary for the Agreement to Undertake Development to be implemented; and

(iii) determination by the Wisconsin Economic Development Corporation ("WEDC") that Buyer has submitted a complete application for the Brownfield Grant (defined below).

(iv) Buyer has delivered to Seller copies of one or more fully executed contracts between Buyer and Buyer's contractor or contractors to construct the Project and the Public Improvements and to implement the Remedial Action Plans at a guaranteed maximum price or guaranteed maximum prices.

(v) Buyer has delivered to Seller documentation satisfactory to Seller that Buyer has secured sufficient funds, or a combination of funds and financing commitments, to pay for the construction of the Project and the Public Improvements.

(b) *Council Approval Required*. Notwithstanding anything to the contrary set forth herein, the City's execution of this Agreement shall not be construed as a commitment by the City of Stoughton Common Council to approve the Development Agreement. The

parties to this Agreement acknowledge that each City approval is an independent action that may be taken by the City of Stoughton Common Council, in the proper exercise of its governmental authority, and the City's entry into this Agreement in no way obligates or commits the City of Stoughton Common Council to grant any City approval.

(c) *Termination*. If all the Contingencies are not satisfied by the Contingency Deadline, this Agreement shall terminate and neither party shall have any further obligation hereunder.

~~4.~~6. Buyer's Condition Precedent. In addition to satisfaction of the Contingencies set forth in Section 5 above, Buyer's obligation to consummate the purchase and sale transaction contemplated by this Agreement is conditioned upon Buyer's receipt of a commitment from a lender to provide the necessary construction financing for the Phase 1 Development, acceptable to Buyer in the exercise of Buyer's sole discretion. If Buyer delivers a loan commitment to the City Finance Director as required by Section 4 (b), above, this condition shall be deemed satisfied.

~~5.~~7. Title Insurance. Within thirty (30) days following the Effective Date of this Agreement, Seller shall deliver to Buyer a commitment ("Commitment") prepared by the Madison, Wisconsin officer of First American Title Insurance Company NCS (the "Title Company") to issue a standard form ALTA owners' policy of title insurance, including gap coverage, for the Phase 1 Land in the amount of the Purchase Price naming Buyer as the proposed insured, showing all liens, encumbrances and other matters of record. The Commitment shall be delivered to Buyer together with legible copies of all documents that appear as exceptions to title. Within thirty (30) days of Buyer's receipt of the Title Commitment, Buyer shall notify Seller, in writing ("Buyer's Title Notice"), of any objections to the Title Commitment. Seller shall use diligent good faith efforts to remove any objections Buyer has with respect to the Title Commitment. If one or more of such objections cannot be removed, Seller shall notify Buyer in writing ("Seller's Notice"), within fifteen (15) days after Seller's receipt of Buyer's Title Notice, of which objections cannot be removed. Buyer shall elect, in writing within ten (10) days thereafter, either to: (i) terminate and cancel the Agreement, in which case all Deposit shall be returned to Buyer and, except as set forth in this Agreement, neither party shall have further obligations hereunder; or (ii) waive the title objections and proceed to Closing. If Seller fails to deliver Seller's Notice within such fifteen-(15) day period, Seller shall be deemed to have agreed to cure all of Buyer's objections. Notwithstanding anything to the contrary contained herein, Seller shall be obligated to remove all monetary encumbrances from title at or before Closing. Exceptions to title approved by Buyer hereunder shall be deemed to be "Permitted Exceptions."

~~6.~~8. Closing.

(a) *Closing Date*. Following the satisfaction of all Contingencies and any other conditions precedent set forth herein, the "Closing" shall occur at the offices of the Title Company on a date mutually acceptable to the parties no later than August 1, 2024 (such date, the "Closing Date").

(b) *Closing Documents*. On or prior to the Closing Date, the parties shall execute the following documents: (i) Seller will execute and record the CSM; (ii) Seller will execute and deliver to Buyer a general warranty deed (the "Deed") conveying the Phase 1

Land to Buyer subject only to the Permitted Exceptions; (iii) Buyer and Seller will complete a Wisconsin Real Estate Transfer Return in the form that is required by state statute in order to record the Deed; (iii) Buyer and Seller will execute and deliver a closing statement setting forth the Purchase Price and any adjustments thereto as provided for in this Agreement; (iv) Seller will execute and deliver to Buyer a Non-Foreign Person Affidavit confirming that Seller is not a foreign person subject to certain federal withholding requirements; (v) the City and the Buyer will execute the Agreement to Undertake Development; (vi) Buyer will deliver the surety required by Section B.2(1) and (vii) Buyer and Seller will execute and deliver any other documents that are necessary to consummate the transaction contemplated by this Agreement, including such documents as are necessary to cause title to be conveyed to Buyer in the form approved by Buyer pursuant to the terms of this Agreement.

(c) *Costs and Expenses*. Seller shall be responsible for paying the Wisconsin real estate transfer fee, the cost of providing title insurance to Buyer and any recording fees related to satisfying any existing mortgages against the Phase 1 Land. Buyer will pay any recording fees related to recording the Deed and to record any mortgages it grants on the Phase 1 Land. The parties shall evenly share any cost of the Title Company to act as the closing agent. Each party will be solely responsible for paying its respective attorney's fees.

(d) *Prorations and Adjustments*. The following items shall be prorated and adjusted between Buyer and Seller as of 12:01 a.m. on the date of Closing as follows:

(i) All utility charges, including, but not limited to, electricity, gas, water, sewer, steam and telephone shall be determined by actual meter readings, if available; otherwise they shall be estimated on the basis of the last billing available from the respective utilities. Any utility deposits, standby charges or other prepayments, if assignable, shall be assigned to Buyer, who shall reimburse Seller therefor.

(ii) General real estate taxes levied against the Phase 1 Land. The proration shall be based on the net general real estate taxes for the year of Closing, if known, otherwise on the net general real estate taxes for the year prior to Closing.

(iii) Assessments, either general or special, for improvements completed prior to Closing, whether matured or unmatured, shall be paid in full by Seller (including all principal and interest). All other assessments shall be paid by Buyer.

(iv) As between Seller and Buyer, Seller shall be responsible for all operating expenses for the Phase 1 Land allocable to the period prior to the date of Closing, and shall pay all such expenses when due; and Buyer shall be responsible for all operating expenses for the Project allocable to the period on and after the date of Closing.

(v) Such other items as are required to be prorated pursuant to the terms hereof, or as are customarily prorated upon the transfer of ownership and possession of commercial rental real estate in Dane County.

The parties agree to make such post-closing adjustments and readjustments as may be required due to errors and omissions in the closing adjustments. If information is not available or if the parties agree that it is impracticable to make a particular adjustment on the date of Closing, that adjustment shall be made as soon as practicable after such information is available.

~~7.~~9. Environmental Remediation.

(a) Buyer and Seller acknowledge that, as of the Effective Date of this Agreement, various environmental contaminants exist on the Riverfront Site, including, without limitation, the contaminants described in the open DNR files identified as BRRTS number 02-13-583169, 02-13-554724, and 02-13-585835; closed DNR files identified as BRRTS number 02-13-579312, 02-13-258425; and general property DNR file identified as BRRTS number 07-13-563581 (the "Existing Contamination").

(b) Promptly following the Effective Date of this Agreement, Buyer shall prepare and submit an application to WEDC's Brownfields Grant Program seeking a grant ("Brownfield Grant") to address some of the costs that will be incurred in remediating the Existing Contamination. Buyer and Seller shall cooperate with one another in pursuing the Brownfield Grant application and in seeking out and maximizing any other potential grant opportunities to address the Existing Contamination.

(c) If Buyer proceeds with the transaction contemplated by this Agreement, Buyer shall be responsible for the remediation of the Existing Contamination as set forth in the Development Agreement.

(d) To the extent not covered by the Brownfield Grant or any other grants that may be awarded for remediation of the Existing Contamination, Seller shall be responsible for all costs reasonably incurred by Buyer in accordance with the terms of the Development Agreement.

(e) Notwithstanding anything to the contrary that may be set forth elsewhere herein, Seller shall be solely responsible for all consulting fees charged by True North Consultants, Inc. in connection with evaluation of the Existing Contamination and the preparation of the Grant Application, even in the event that this Purchase Agreement is terminated prior to Closing. The obligation contained in this paragraph shall survive the termination of this Agreement.

~~8.~~10. Development of Future Phases.

(a) *Buyer's Right of First Opportunity*. Buyer was selected by Seller to pursue the acquisition and redevelopment of the Riverfront Site following a public evaluation process. Buyer's proposal (which is reflected in the GDP) involves a phased approach to development, beginning with the Phase 1 Land. To allow the possibility for the overall redevelopment plan envisioned in Buyer's initial submission to Seller to be realized, Seller hereby grants Buyer a right of first opportunity to acquire and develop the future phases of the Riverfront Site, according to the procedures set forth in this Section 10 (the "Right of First Opportunity").

(b) *Term*. The Right of First Opportunity shall be in effect for a period of five (5) years following the Closing of Buyer's acquisition of the Phase 1 Land (the "Term"), unless sooner terminated according to the procedures set forth herein.

(c) *Purchase Price*. During the Term, the purchase price to be paid by Buyer for each future phase of the Riverfront Site shall be an amount equal to Five Thousand and no/100 Dollars ($5,000) multiplied by the total number of dwelling units proposed to be developed by Buyer in each such phase of development.

(d) *Exclusivity*. Throughout the Term, provided Buyer is not in default of any of Buyer's obligations under the Agreement to Undertake Development for the Phase 1 Land, Seller will not enter into any other agreements concerning the development of the Riverfront Site without first complying with the provisions set forth in this Section 10.

(e) *Buyer's Right to Submit Proposals to Seller.* At any time during the Term, Buyer may initiate negotiations with Seller for development of future phases of the Riverfront Site upon written notice to Seller. If, within six (6) months following Buyer's notice to Seller, such negotiations do not lead to a mutually acceptable and legally binding agreement between Buyer and Seller for the next phase of development, the Right of First Opportunity shall terminate and be of no further force or effect.

(f) *Seller's Right to Solicit Proposals from Buyer*. At any time during the Term, after an occupancy permit has been issued for any building within the Phase 1 Land, Seller may initiate negotiations with Buyer for development of future phases of the Riverfront Site upon written notice to Buyer~~Seller~~. If, within eight (8) months following Seller's notice to Buyer, such negotiations do not lead to a mutually acceptable and legally binding agreement between Buyer and Seller for the next phase of development, the Right of First Opportunity shall terminate and be of no further force or effect.

(g) *Termination for Cause*. If Buyer is in default of any material obligation under the Agreement to Undertake Development for the Phase 1 Land beyond applicable notice and cure periods, Seller may terminate the Right of First Opportunity upon written notice to Buyer.

(h) *Survival*. The terms of this Section 10 shall survive the Closing of Buyer's acquisition of the Phase 1 Land.

(i) *Good Faith and Fair Dealing*. Buyer and Seller acknowledge and agree that the performance of obligations with respect to the Right of First Opportunity shall be undertaken in good faith, and with all parties dealing fairly with each other in an attempt to reach agreement for future phases of development that are consistent with the GDP approved by the City Council.

~~9.~~11. Seller's Representations and Warranties. In order to induce Buyer to enter into this Agreement, Seller hereby makes the following representations and warranties to Buyer, each of which shall be deemed to be independently material and relied upon by Buyer, regardless of any investigation made by, or information known to, Buyer, and upon which Buyer has relied and without which Buyer would not have submitted this Agreement. Seller

covenants and agrees that each of the representations are true and correct on the date hereof and, as a condition precedent to Buyer's obligation to close, Seller shall affirm that each of these representations continue to be true and correct on the date of Closing, and that such representations and warranties shall survive Closing:

(a) *Authority*. The sale of the Phase 1 Land pursuant to this Agreement is not in violation of any provision of any agreement to which Seller is bound. Seller has complete power and authority to enter into and perform the transaction contemplated by this Agreement according to its terms, and the execution and delivery of this Agreement and the consummation thereof have been duly authorized by all required action.

(b) *Litigation, Court Orders*. There are no legal actions, condemnation proceedings, suits or other legal administrative proceedings, pending, or to the knowledge of Seller, threatened, against the Phase 1 Land, and there are no governmental agency or court orders requiring repairs, alterations or corrections of any existing conditions on the Phase 1 Land excepting proceedings with the Wisconsin Department of Natural Resources relating the Existing Contamination.

~~10.~~12. Seller's Covenants.

(a) *Access*. Following the Effective Date and up to and including the date of Closing, Seller shall grant Buyer access to the Phase 1 Land at reasonable times and upon reasonable notice for the purpose of making such investigations, studies, assessments and the like that Buyer deems necessary or desirable, consistent with good commercial practice.

(b) *Continued Operation*. Following the Effective Date and up to and including the date of Closing, Seller shall maintain the Phase 1 Land in good condition and repair, reasonable wear and tear excepted and shall continue to operate the Phase 1 Land in its ordinary and normal course of business.

~~11.~~13. Buyer's Representations and Warranties. Buyer covenants and agrees that the Buyer is a limited liability company duly organized, validly existing and in current status under the laws of the State of Wisconsin. The purchase of the Phase 1 Land pursuant to this Agreement is not in violation of any provision of Buyer's articles of organization, operating agreement or any other agreement to which Buyer is bound. Buyer has complete power and authority to enter into and perform the transaction contemplated by this Agreement according to its terms, and the execution and delivery of this Agreement and the consummation thereof have been duly authorized by all required company action. The person (or those persons) signing below on behalf of Buyer personally warrant that they have the authority to act as Buyer's agent or agents in the purchase, transfer and conveyance of the Phase 1 Land from Seller.

~~12.~~14. Notices. All notices or directions desired or required to be given under this Agreement shall be in writing and personally delivered, sent by commercial overnight courier or delivered via email, directed as follows:

If to Buyer: Stoughton Riverfront Development, LLC
701 E. Washington Ave., Ste. 105
Attention: Curt Brink

Telephone: 608.575.4845
Email: curtbrink@hotmail.com

with a copy to: Carlson Black O'Callaghan & Battenberg LLP
222 W. Washington Ave. Ste. 705
Madison, WI 53703
Attn: Daniel A. O'Callaghan
Telephone: 608.888.1685
Email: dan.ocallaghan@carlsonblack.com

If to Seller: City of Stoughton
207 S. Forrest St.
Stoughton, WI 53589
Attn: Finance Director
Telephone: 608.873.6677
Email: dehlinger@cityofstoughton.com

and: City of Stoughton Redevelopment Authority
207 S. Forrest St.
Stoughton, WI 53589
Attn: Executive Director
Telephone: 608.873.6677
Email: dehlinger@cityofstoughton.com

with a copy to: Stafford Rosenbaum LLP
222 West Washington Avenue, Suite 900
Madison, Wisconsin 53701-1784
Attn: Matthew P. Dregne and Rick A. Manthe
Telephone: 608.259.2618
Email: MDegne@staffordlaw.com
RManthe@staffordlaw.com

Notices personally delivered shall be deemed received when given. Notices sent by email shall be deemed received when given, if prior to 5 PM, recipient's local time, on a business day, otherwise on the next occurring business day. Notices or demands sent by commercial overnight courier shall be deemed received on the next business day following deposit.

~~13.~~15. Brokers. Buyer and Seller represent and warrant that neither Buyer nor Seller have retained the services of any real estate broker or agent in connection with the purchase and sale under this Agreement and each agrees to indemnify and hold the other harmless from and against any and all liability or damages, including costs and attorney's fees, resulting from any claim brought by any other real estate broker or agent for any real estate commission or finder's fee due, or alleged to be due, as the result of the actions of such person.

~~14.~~16. Adequacy of Consideration. Buyer and Seller acknowledge that they each will expend material sums of money in reliance on their respective obligations under this Agreement, in connection with negotiating and executing this Agreement, conducting the due diligence

activities contemplated by this Agreement and preparing for Closing, and that Buyer and Seller would not have executed the Agreement without the availability of the milestones and contingencies for due diligence activities described herein. Buyer and Seller, therefore agree that adequate consideration exists to support each of the party's obligations under this Agreement, and Seller and Buyer each waive any and all rights to challenge the enforceability of this Agreement on the basis that any of the milestones, conditions or contingencies set forth herein are at Seller's or Buyer's sole discretion or that any of the agreements contained herein are illusory.

~~15.~~17. Miscellaneous.

(a) *Dates and Deadlines*. Unless otherwise specifically provided herein, in the computation of any period of time which shall be required or permitted hereunder or under any law for any notice or other communication or for the performance of any term, condition, covenant or obligation, the day from which such period runs shall be excluded and the last day of such period shall be included unless it is a Saturday, Sunday or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday or legal holiday.

(b) *Status of November 15, 2023 Agreement*. This Agreement supersedes and takes the place of the Real Estate Purchase and Sale Agreement effective as of November 15, 2023.

~~(b)~~(c) *Assignment*. Buyer may assign its rights and obligation under this Agreement at any time to an entity that is related to, and/or controlled by, Buyer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns.

~~(c)~~(d) *Modifications*. This Agreement may only be modified in writing signed by both Seller and Buyer.

~~(d)~~(e) *Further Assurances*. The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before or after the Closing as shall be necessary or desirable to fully carry out the terms of this Agreement and to fully consummate the transaction contemplated hereby.

~~(e)~~(f) *Captions*. The captions at the beginning of the several paragraphs and subparagraphs, respectively, are for convenience in locating the context only, and are not part of the text.

~~(f)~~(g) *Governing Law*. This Agreement shall be interpreted in accordance with the laws of the State of Wisconsin without giving effect to principles of conflicts of law thereof.

~~(g)~~(h) *Severability*. In the event any term or provision of this Agreement shall be held illegal, invalid or unenforceable, or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby but each such term and provision shall be valid and shall remain in full force and effect.

~~(h)~~(i) *Attorney's Fees*. If either party commences an action to enforce the terms of, or to resolve a dispute concerning, this Agreement, the substantially prevailing party in any such action shall be entitled to recover from the substantially non-prevailing party all costs and expenses incurred in connection with such action, including, but not limited to, reasonable attorney's fees and court costs.

~~(i)~~(j) *Counterparts; Facsimile*. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one original instrument. Signatures transmitted by facsimile or PDF by email shall be deemed to be original signatures for all purposes.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUYER:
STOUGHTON RIVERFRONT DEVELOPMENT, LLC

By:_____ Date: _____
Curt Brink, Manager

SELLER:
CITY OF STOUGHTON

By:_____ Date: _____
Mayor Timothy Swadley

CITY OF STOUGHTON REDEVELOPMENT AUTHORITY

By:_____ Date: _____
Peter Manley, Chair

ATTEST:

_____
Candee Christen, City Clerk

Approved as to form:
STAFFORD ROSENBAUM LLP

_____
By: Mathew Dregne, City Attorney

EXHIBIT A

EXHIBIT A: DRAFT CERTIFIED SURVEY MAP

CERTIFIED SURVEY MAP

LOTS 2 THROUGH 8, 14, 15 AND PART OF LOTS 1 AND 9 THROUGH 13, BLOCK 25, ORIGINAL PLAT OF THE CITY OF STOUGHTON, PARCELS A, B AND PART OF C, CERTIFIED SURVEY MAP NO. 1645, ALL BEING PART OF THE SE 1/4 AND THE SW 1/4 OF THE NE 1/4 OF SECTION 8, T5N, R11E, IN THE CITY OF STOUGHTON, DANE COUNTY, WISCONSIN

"Received for recording this _____ day of _____, 20____, at _____ o'clock ___.M., and recorded in Volume _____ of Certified Surveys, pages _____

_____

Kristi Chlebowski, Register of Deeds

ONEIDA ENGINEERING SOLUTIONS
5100 EASTPARK BOULEVARD, SUITE 200
MADISON, WI 53718

LAND SURVEYOR CERTIFICATE

I, Francis R. Thousand, registered land surveyor, hereby certify that in full compliance with the provisions of Chapter 236, Wisconsin Statutes and the subdivision regulations of the City of Stoughton and according to the instructions and descriptions furnished to me by the owners listed hereon, I have surveyed this property and that such Certified Survey Map correctly represents all exterior boundaries and subdivision of the land surveyed and is described as:

Lots 2 through 8, 14, 15 and part of Lots 1 and 9 though 13, Block 35, Original Plat of the City of Stoughton, Parcels A, B and part of C, Certified Survey Map No. 1645, all being part of the SE 1/4 and the SW 1/4 of the NE 1/4 of Section 8, T5N, R11E, in the City of Stoughton, Dane County, Wisconsin, to–wit:

Commencing at the Northwest corner of said NE 1/4; thence S00°02'22"W, 1344.24 feet; thence S89°21'14"E, 751.39 feet to the Northwest corner of said Block 35 and the point of beginning; thence continuing along the North line of South Street, S89°21'14"E, 132.00 feet to the Northwest of Lot 13, said Block 35; thence along the west line of said Lot 13, S00°40'09"W, 132.00 feet; thence S89°21'14"E, 231.00 feet; thence N47°28'00"E, 28.81 feet; thence S00°40'09"W, 10.50 feet; thence N44°31'26"E, 80.11 feet; thence N00°40'09"E, 65.04 feet to the south line of South Street; thence along said South line, S89°21'14"E, 484.58 feet to the Northeast corner of Lot 2 of said Block 35; thence S00°49'44"W, 297.29 feet to a found survey nail; thence S89°16'17"E, 25.16 feet to a found 1" iron pipe; thence S00°49'44"W, 349.35 feet to a meander line along the Yahara River; thence along said meander line, S88°21'14"W, 116.46 feet; thence continuing along said meander line, N78°45'47"W, 277.05 feet; thence continuing along said meander line, N52°12'38"W, 221.29 feet; thence continuing along said meander line, N67°50'23"W, 166.25 feet; thence continuing along said meander line N89°27'50"W, 176.96 feet; thence continuing along said meander line N79°13'17"W 52.59 feet to the East side of Fourth Street; thence along said East side, N00°40'09"E, 397.71 feet to the point of beginning. Together with all land between the meander line and the river. This parcel contains 455370 sq. ft. 10.454 Acres to the meander line and 476000 sq. ft. 10.9 Acres to the river.

Dated this _____ day of _____, 2019.

Madison, Wisconsin _____

Francis R. Thousand
Land Surveyor # S–1363

CITY OF STOUGHTON COMMON COUNCIL RESOLUTION

"Resolved that this Certified Survey Map located in the City of Stoughton was hereby approved by resolution adopted on this _____ day of _____, 20____ and that said resolution further provided for the acceptance of those lands and rights dedicated by said Certified Survey Map to the City of Stouhtion for Public use.

Dated this _____ day of _____, 20__".

_____

Mayor, City of Stoughton

SURVEYED FOR:
CURT VAUGHN BRINK LLC
701 E WASHINGTON AVE #103
MADISON, WI 53703

DATE APRIL 12, 2021
JOB # 2019046

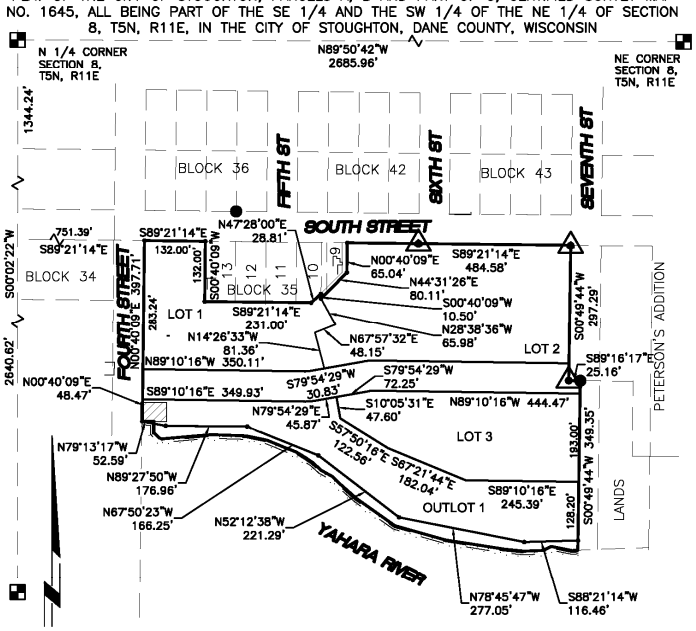
THIS INSTRUMENT WAS DRAFTED BY FRANCIS THOUSAND

SHEET 1 OF 3

EXHIBIT A: DRAFT CERTIFIED SURVEY MAP

CERTIFIED SURVEY MAP

LOTS 2 THROUGH 8, 14, 15 AND PART OF LOTS 1 AND 9 THROUGH 13, BLOCK 25, ORIGINAL PLAT OF THE CITY OF STOUGHTON, PARCELS A, B AND PART OF C, CERTIFIED SURVEY MAP NO. 1645, ALL BEING PART OF THE SE 1/4 AND THE SW 1/4 OF THE NE 1/4 OF SECTION 8, T5N, R11E, IN THE CITY OF STOUGHTON, DANE COUNTY, WISCONSIN



NOTES:
ALL BEARINGS ARE REFERENCED TO GRID NORTH OF THE WISCONSIN COUNTY COORDINATE SYSTEM – DANE ZONE, NAD83(2011). THE NORTH LINE OF THE NE ¼ BEARS N89°50'42"W.

LEGEND
- BRASS CAP IN CONCRETE FOUND
- IRON STAKE FOUND
- 1 1/4" X 30" REBAR 4.30 LBS/FT PLACED
- SURVEY NAIL FOUND
- 7/8" X 24" REBAR 2.04 LBS/FT PLACED
- (263.56') RECORDED AS DATA
- 263.51' MEASURED DATA
- EXISTING BUILDING

SCALE 1" = 200'
0' 100' 200' 400'

SURVEYED FOR:
CURT VAUGHN BRINK LLC
701 E WASHINGTON AVE #103
MADISON, WI 53703

DATE April 12, 2021
JOB # 2019046

THIS INSTRUMENT WAS DRAFTED BY JOHN THOUSAND

SHEET 2 OF 3

EXHIBIT A: DRAFT CERTIFIED SURVEY MAP
CERTIFIED SURVEY MAP

LOTS 2 THROUGH 8, 14, 15 AND PART OF LOTS 1 AND 9 THROUGH 13, BLOCK 25, ORIGINAL PLAT OF THE CITY OF STOUGHTON, PARCELS A, B AND PART OF C, CERTIFIED SURVEY MAP NO. 1645, ALL BEING PART OF THE SE 1/4 AND THE SW 1/4 OF THE NE 1/4 OF SECTION 8, T5N, R11E, IN THE CITY OF STOUGHTON, DANE COUNTY, WISCONSIN

OWNERS CERTIFICATE

The City of Stoughton, as owner, does hereby certify that it caused the land described on this Certified Survey Map to be surveyed, divided, mapped and dedicated as represented hereon.

In Witness whereof, said City of Stoughton, has caused these presents to be signed by _____, its _____, at Stoughton, Wisconsin, this _____ day of _____20____.

_____ _____

Authorizes Representative

STATE OF WISCONSIN)
)S.S.
COUNTY OF DANE)

Personally came before this _____ day of _____, 20____. the aboved named _____ to me known to be the person who executed the foregoing instrument and acknowledge the same.

My Commission Expires _____

_____

Notary Public

SURVEYED FOR:
CURT VAUGHN BRINK LLC
701 E WASHINGTON AVE #103
MADISON, WI 53703

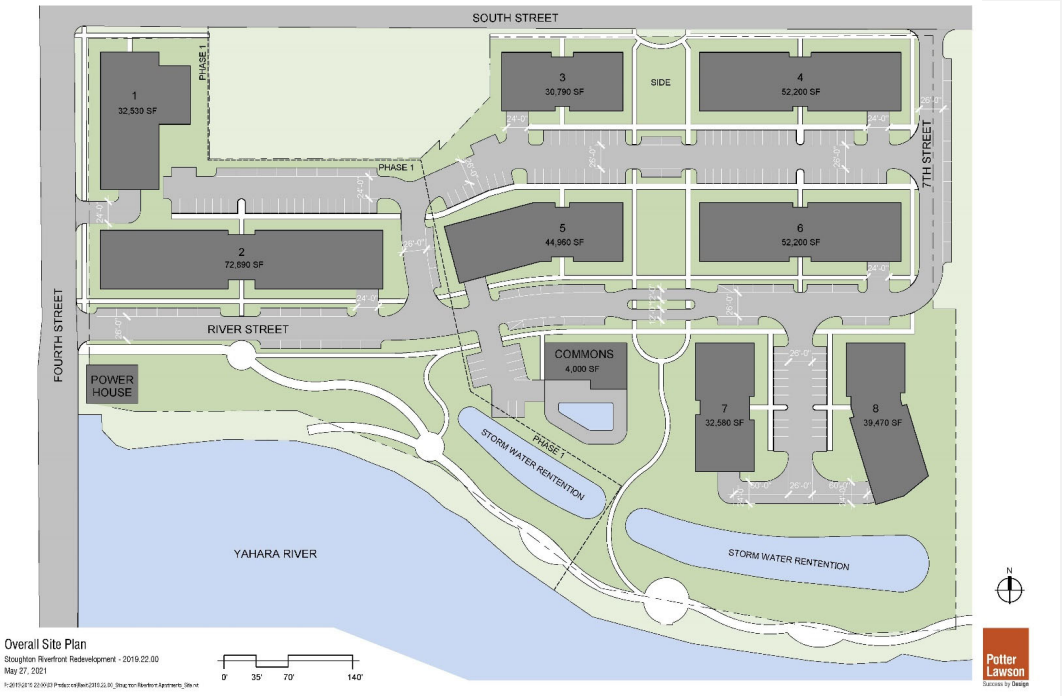
DATE APRIL 12, 2021
JOB # 2019046

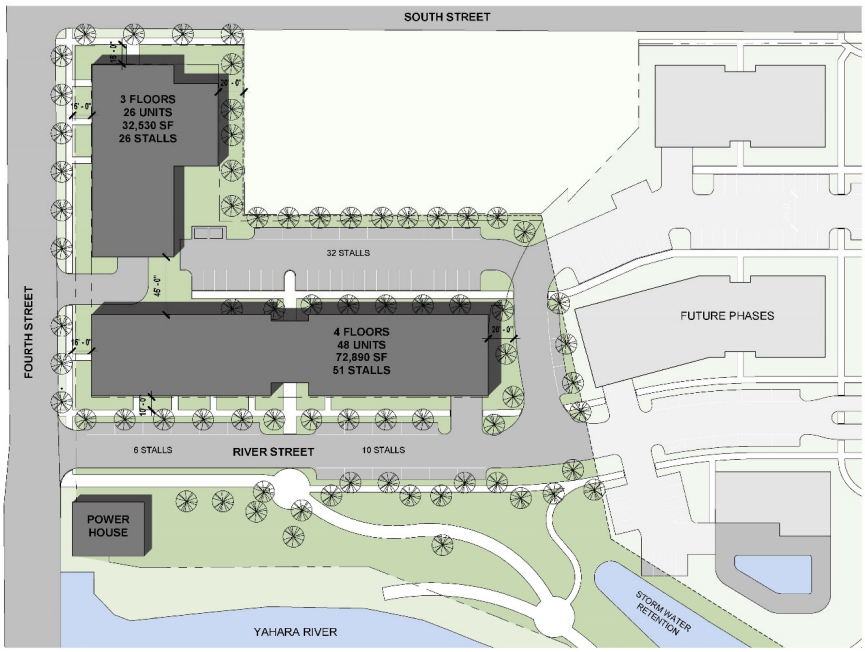
THIS INSTRUMENT WAS DRAFTED BY FRANCIS THOUSAND

SHEET 3 OF 3

EXHIBIT B

PHASE 1 CONCEPT PLANS





Phase 1 Site Plan

Stoughton Riverfront Redevelopment - 2019.22.00

May 27, 2021

0' 25' 50' 100'

Potter Lawson

Success by Design

Perspective Views: Building 1

Stoughton Riverfront Redevelopment - 2019.22.00

May 27, 2021

Potter Lawson

Success by Design

Perspective Views: Building 2

Stoughton Riverfront Redevelopment - 2019.22.00

May 27, 2021

Potter Lawson

Success by Design

EXHIBIT C

FORM OF AGREEMENT TO UNDERTAKE DEVELOPMENT

[attached]

AGREEMENT TO UNDERTAKE DEVELOPMENT

(Riverfront Redevelopment – Phase 1)

THIS AGREEMENT TO UNDERTAKE DEVELOPMENT entered into as of the 14th day of November, 2023, by and among the City of Stoughton, a Wisconsin municipal corporation (the "City"), the City of Stoughton Redevelopment Authority, a body corporate and politic (the "RDA)") and Stoughton Riverfront Development, LLC, a Wisconsin limited liability company (the "Developer").

RECITALS

1. The City, the RDA and Developer entered into a Real Estate Purchase and Sale Agreement effective November 14, 2023 (the "Purchase Agreement").

2. Developer proposes to purchase the real property described as Lot 1 on Attachment A attached hereto (the "Phase 1 Land"), and intends to undertake multi-family residential development on the Phase 1 Land, and construct certain public improvements needed to serve the Phase 1 Land, in accordance with Planned Development District zoning approved by the City.

3. The Purchase Agreement and Chapter 66 of the City of Stoughton Municipal Code require that an agreement be made for the installation of improvements needed to serve the Phase 1 Land.

4. Developer is unable to develop the Phase 1 Land and construct the necessary public improvements without financial assistance.

5. The City has created Tax Increment District No. 8, to facilitate redevelopment of the Phase 1 Land.

6. The City finds and determines that unless the City provides the tax increment development assistance described in this Agreement, Developer will not develop the Phase 1 Land.

7. The City finds that the development of the Phase 1 Land and the fulfillment of the terms and conditions of this Agreement are in the vital and best interests of the City and its residents, by expanding the tax base, remediating environmental contamination and redeveloping the Phase 1 Land, creating needed housing, thereby serving public purposes in accordance with state and local law.

8. The City Council on November 14, 2023, adopted Resolution No. R-176-2023 approving this Agreement and authorizing the City, through its duly authorized officials and agents, to execute this Agreement.

AGREEMENT

In consideration of the Recitals, and the mutual promises, obligations and benefits provided hereunder, the receipt and adequacy of which are hereby acknowledged, Developer, the RDA and the City agree as follows:

A. **DEFINITIONS.** As used in this Agreement, the following terms, when having an initial capital letter, shall mean:

1. Actual Tax Increment. Eighty percent of the tax increment actually received by the City from taxes levied on the Phase 1 Land in a given year, as reasonably calculated by the City. As of the effective date of this Agreement, the Department of Revenue calculates the combined tax increment generated by all tax increment districts in the City, using a methodology reflected on Wisconsin Department of Revenue form PC-202. The parties agree that the City may reasonably calculate the tax increment actually received by the City by multiplying the total "interim rate" from form PC-202 for the applicable year by the Value Increment for that year. The total interim rate is obtained by dividing the combined levies from each taxing jurisdiction (the sum of the apportioned levies in column A on form PC-202) by the total equalized value of all taxable property in the City, excluding the value increment of all tax increment districts in the City (the amount used in column B on form PC-202). If the Wisconsin Department of Revenue discontinues or modifies form PC-202, or otherwise modifies the manner in which it calculates tax increment, the City may calculate tax increment in such other reasonable manner as it determines appropriate. The City may make such adjustments in calculating tax increment needed so that, if tax increment is so calculated for all parcels in the District, the sum does not exceed the total tax increment received by the City from taxes levied on all property in the District.

2. Affiliate. In relation to Developer, any other entity which: (i) directly or indirectly controls, is controlled by, or under common control with, the Developer; (ii) directly or indirectly owns or holds more than fifty percent (50%) of the equity interests in the Developer; or (iii) directly or indirectly owns or holds more than fifty percent (50%) of the voting stock or other equity interest held by the Developer. For purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with") means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of the Developer, whether through the ownership of voting securities, by contract or otherwise.

3. Base Value. The parties agree that the Base Value is zero.

4. Public Improvements. The following public improvements to be constructed for the benefit of the District in accordance with plans and specifications to be prepared by Developer and approved by the City Planning Director:

(a) *Utility Relocation*:

(1) Sewer main to serve the Project with a stub to facilitate connection to future development adjacent to the Phase 1 Land.

(2) Water main to loop between Fourth Street and South Street through Seventh Street.

1.

(3) Storm sewer to convey water from Fourth Street and from South Street to the Yahara River.

2.

(4) Storm sewer within the River Street right-of-way to convey storm water from the Project to stormwater management facilities.

3.

(b) *Future River Street Parallel to the Yahara River*: Public street, curb, gutter, sidewalk, street lighting, street trees and sanitary sewer, water, and storm sewer utility infrastructure and associated site grading work located between the East right-of-way line of existing Fourth Street and a point approximately 420 feet East of the East right-of-way line of existing Fourth Street.

(c) *Fourth Street*: Curb, gutter, sidewalk, and street trees within the Fourth Street right-of-way adjacent to the Riverfront Site.

4.

(d) *Stormwater Management or Stormwater Improvements*: Stormwater management facilities to be constructed on the lands described as Outlot 1 in Attachment A, to serve the development of the Phase 1 land, including a regional infiltration basin and a regional water quality basin, in accordance with site grading, erosion control and stormwater management plans to be prepared by Developer and subject to approval by the City.

(e) *Additional Public Improvements*: Any public improvements necessary to serve the Project as reasonably determined by the City during the course of reviewing plans for the Project or the Public Improvements.

5. District. Tax Increment District No. 8.

6. Existing Contamination. Environmental contamination located on the Phase 1 Land and elsewhere within the Riverfront Site, as of the date the Phase 1 Land is conveyed to Developer, including without limitation, the contaminants described in the open DNR files identified as BRRTS number 02-13-583169, 02-13-554724, and 02-13-585835; closed DNR files identified as BRRTS number 02-13-579312, 02-13-258425; and general property DNR file identified as BRRTS number 07-13-563581.

7. Environmental Consultant. True North Consultants, Inc., or such other environmental consultants as the parties select by mutual agreement.

8. Remedial Action Plans. The Material Management and Interim Remediation Plan (the "Stoughton Riverfront Development Plan") attached as Attachment G, and the Remedial Action Plan (the "Stoughton Public Works Garage Plan") attached as Attachment H, as approved by the Wisconsin Department of Natural Resources (the "WDNR") in the letter dated July 20, 2022, attached as Attachment I.

9. Project. The construction of two, multi-family residential buildings on the Phase 1 Land in accordance with Planned Development District zoning approved by the City.

10. Phase 1 Land. The land described as Lot 1 in Attachment A.

11. Riverfront Site. An approximately 10.9-acre tract of land located in the City of Stoughton, Dane County, Wisconsin, bounded on the west by Fourth Street, on the east by a line extending generally south from Seventh Street, on the north by South Street and on the south by the Yahara River.

12. Value Increment. The fair market value of the Phase 1 Land in a given year, as shown on the real property tax bill for the Phase 1 Land for that year, minus the Base Value.

B. **DEVELOPER OBLIGATIONS.**

1. Construction of Public Improvements and Remediation of Environmental Contamination.

(a) *Design of Improvements.* Developer shall prepare detailed plans and specifications of the Public Improvements for review by and subject to approval by the City Planning Director. Where standards and/or specifications have not been established by the City, all work shall be designed and constructed in accordance with established engineering practices as designated and approved by the City Planning Director. All Public Improvements shall be designed, constructed and installed in accordance with the standard specifications of the City, except as variances to or waivers of those requirements have been granted, and in accordance with plans and specifications approved by the City Planning Director.

(b) *Construction of Public Improvements*. Developer shall be responsible for the construction and installation of the Public Improvements. Except as otherwise provided in this Agreement, the Public Improvements will be designed, constructed and installed at Developer's sole expense.

(c) *Remediation of Environmental Contamination*.

(1) Developer shall implement and comply with the Remedial Action Plans for the entire Riverfront Site. Developer shall perform the material management and soil remediation work described in Sections 4.0 and 5.0 of the Stoughton Public Works Garage Plan, and shall perform the material management and soil remediation work described in Section 3.0 of the Stoughton Riverfront Development Plan. Developer acknowledges and agrees to the roles and

responsibilities set forth in Section 5.0 of the Stoughton Riverfront Development Plan, and acknowledges that it will serve in the role of "Owner" in implementing the Remedial Action Plans, except that the City shall be responsible for contracting with and paying the Environmental Consultant. The City and the RDA authorize Developer to occupy and implement the Remedial Action Plans on their lands within the Riverfront Redevelopment Site during the construction of the Project, the Public Improvements and the Stormwater Management facilities.

(2) Developer shall be responsible for any continuing obligations relating to the Phase 1 Land as may be required by the WDNR, including those outlined in the July 20, 2022 approval letter from the WDNR attached as Attachment I, and including but not limited to the installation of sub-slap vapor mitigation systems and completion and approval of commissioning reports, and any required cap maintenance, at Developer's cost. Notwithstanding the foregoing, the City shall be responsible for any continuing groundwater monitoring on the Phase 1 Lands the WDNR may require, and Developer authorizes the City to conduct such groundwater monitoring on the Phase 1 Lands. The City shall also be responsible for any continuing obligations as may be required by the WDNR relating to lands other than the Phase 1 Land, including those outlined in the July 20, 2022 approval letter from the WDNR, including monitoring, at the City's cost, through case closure for the Riverfront Site by the WDNR.

(d) *Public Bidding of Public Improvements and Remediation of Environmental Contamination*. Developer shall publicly advertise, bid and contract for the construction of the Public Improvements and the remediation of the Existing Contamination pursuant to the Remedial Action Plans, in accordance with Wisconsin law governing public construction, including but not limited to Wis. Stat. §§ 62.15, 66.0901 and 779.14, under the supervision of the City Planning Director and City Attorney. Statutory bid bonds, performance bonds and payment bonds shall be required for all Public Improvements and for the remediation of Existing Contamination, in a form, and from sureties, approved by the City, and shall be issued for the express benefit of Developer and the City. Developer shall prepare all bidding documents, contracts and bonds, subject to review and approval by the City Planning Director and the City Attorney. Construction contracts shall expressly grant the City the same rights to enforce the contract against contractors and sureties as Developer. The bid opening and bid evaluation shall be conducted jointly by the Developer and the City. All contracts for construction of the Public Improvements and the remediation of Existing Contamination shall be awarded by Developer to the lowest responsible bidder. In the event of a disagreement between the City and Developer regarding which bid is the lowest responsible bid, the City's determination shall be final. In the case of an asserted mistake, omission or error in a bid, the parties shall follow the requirements of Wisconsin law, including Wis. Stat. § 66.0901(5). In the event of a disagreement regarding whether to allow correction or withdrawal of a bid, the City's determination shall be final. Once a contract has been awarded pursuant to this section, no change order that increases the contract price for the work may be approved without the City's prior written consent.

(e) *Construction Management*. Two copies of the approved, signed and stamped plans and specifications shall be provided to the City Planning Director, and one copy shall be provided to each contractor. Only stamped and signed copies of the plans and specifications shall be used on the job site.

(f) *Traffic Control, Signs and Barricades.* Developer shall install or cause the installation of, and maintain during construction and until the Public Improvements are accepted by the City, traffic controls as specified in a traffic control plan to be prepared by Developer and approved by the City Planning Director. The traffic control plan shall be prepared in accordance with the Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration.

(g) *City Approval of Starting Dates.* No land disturbances or work on the Public Improvements shall begin without the City Planning Director's approval of a starting date and schedule which shall be submitted by the Developer to the City Planning Director a minimum of 20 calendar days before work is scheduled to begin.

(h) *Change to Work Order*. All change orders for the Public Improvements and for the remediation of Existing Contamination shall be reviewed and approved by Developer and the City Planning Director. Except as otherwise provided in this Agreement, or subsequently agreed to in writing by the parties, the City shall not be required to reimburse Developer for costs of any change orders relating to the Public Improvements or the remediation of Existing Contamination.

(i) *Time of Completion*. The Public Improvements shall be substantially complete within 18 months after all conditions precedent in Section D have been satisfied, or before the time the Project is completed, whichever is sooner. No damages may be recovered by Developer or any person against the City for delay in completion of the Public Improvements.

(j) *Acceptance*. After the Public Improvements required by this Agreement have been substantially completed, and within 10 days after receiving written notice that the Developer desires the City to inspect the On-Site Public Improvements, the City Planning Director or his designee shall inspect the improvements and, if acceptable to the City Planning Director, the City Council shall by resolution certify such completed improvements as being in compliance with the standards and specifications of the City. Before obtaining certification of any such improvements, Developer shall: (1) present to the City valid lien waivers from all contractors and subcontractors providing materials or performing work on the improvements for which certification is sought; and (2) provide as-built drawings to the City Planning Director consisting of four hard copies on paper, one electronic copy as a pdf file, and one electronic copy in a digital format that is acceptable to the City. Certification by the City does not constitute a waiver by the City of the right to take action on account of defects in or failure of any improvements that are detected or which occur following such certification.

The Developer agrees that Public Improvements will not be accepted by the City until the Public Improvements have been inspected and approved by the City Planning Director and furthermore

until lien waivers are received by the City demonstrating that the contractors and their suppliers have been paid in full for all work and materials furnished under this Agreement. Water main and the respective service laterals shall not be accepted until a complete breakdown of all construction, engineering and administrative costs incurred by Developer is submitted to the City Planning Director. In addition, the water system installation shall not be accepted until a bacteriologically safe sample is obtained and tested by a certified agency, and the City has been provided with a report from such agency confirming such testing. Developer shall be responsible to flush the main, obtain the samples, and have all tests completed as may be required for the City's acceptance, under the direct supervision of the City's water utility personnel. In addition, Developer shall clean the storm sewers in accordance with the directives of the City Planning Director.

The Developer agrees to provide for maintenance and repair of all required Public Improvements until such Public Improvements are formally accepted by the City.

The City will provide timely notice to Developer whenever inspection reveals that an improvement does not conform to the required standards and specifications or is otherwise defective. The Developer shall have 30 days from the issuance of such notice to cure the defect. If Developer is unable to cure the defect within 30 days due to an event or circumstance beyond the reasonable control of and without Developer's fault, neglect or negligence, the time to cure the defect shall be extended for such time as the event or circumstance preventing cure is removed.

(k) *Guarantee of Public Improvements*. The Developer agrees to guarantee and warrant all work performed on the Public Improvements under this Agreement for a period of one year from the date of final acceptance by the City of the work completed by the Developer against defects in workmanship or materials. If any defect appears during the guarantee period, the Developer agrees to make required replacement or acceptable repairs of the defective work at its own expense, including total and complete restoration of any disturbed surface or component of the improvements on lands where the repairs or replacement is required, to the standard provided in the approved plans and specifications. All guarantees or warranties for materials or workmanship of suppliers and third-party contractors for work performed under this Agreement which extend beyond the above guarantee period shall be assigned by Developer to the City.

(l) *Surety*. In addition to the statutory performance and payment bonds required in section B.1 (d), Developer shall provide to the City, by not later than the closing on the conveyance of the Phase 1 Land to Developer, a letter of credit or performance bond in the amount of 125 percent of the estimated cost of constructing the Public Improvements. Any letter of credit or performance bond shall be acceptable to the City, in both form and substance. The following provisions will apply if a letter of credit is provided:

(1) Payment under Letter of Credit. The Letter of Credit shall be payable to the City at any time upon presentation of (1) a sight draft drawn on the issuing Bank in the amount to which the City is entitled to draw pursuant to the terms of this Agreement; (2) a written statement by a City official that the City is entitled to draw on the Letter of Credit; and (3) the original Letter of Credit.

(2) Accounting. Developer may inspect the City records of payments made using the Letter of Credit upon request at reasonable times. However, the City retains the exclusive right to determine, among other things, questions of design, specifications, construction cost, performance, contract compliance, and payment in connection with the Public Improvements. In the absence of fraud or palpable error on the part of the City, the City's decisions on all such matters shall control and shall be final.

(3) Notice of Expiration. The initial and each renewed or replacement letter of credit shall by express language be automatically extended without amendment for a period of one year from its expiration date, unless at least 45 days before such expiration date the issuer of the letter of credit notifies the City in writing that the letter of credit will not be extended for an additional one year period, or notifies the City in writing that the letter of credit will be renewed or replaced by a letter of credit in an amount that is less than the amount required by this Agreement, which amount shall be specified in such written notice. Upon receipt of notice that the letter of credit will not be extended for an additional one year period, or will be extended, renewed or replaced in an amount that is less than the amount required by this Agreement, the City may draw upon the letter of credit up to the letter of credit amount required by this Agreement.

(4) Remedies Not Exclusive. The remedies provided in this Section are not exclusive. The City may use any other remedies available to it under this Agreement, any performance or payment bonds, or any remedies available in law or equity in addition to, or in lieu of, the remedies provided in this Section.

2. Complete the Project. Developer must complete the Project.

3. Park Land and Park Improvement Impact Fees. Developer acknowledges that as a condition of receiving building permits for the Project, Developer will be required to pay impact fees to the City for the acquisition of parkland and for the improvement of parkland, pursuant to Chapter 67 of the City of Stoughton Code of Ordinances.

C. **CITY OBLIGATIONS.**

1. Reimbursement to Developer for Cost of Material Management and Environmental Remediation.

(a) *WEDC Brownfields Grant*. Pursuant to the Purchase Agreement, Developer is responsible to prepare and submit an application to the Wisconsin Economic Development Corporation ("WEDC") Brownfields Grant Program seeking a grant ("Brownfield Grant") to pay eligible costs that will be incurred in managing materials and remediating the Existing Contamination. Developer, the RDA and the City shall cooperate with one another in pursuing the WEDC Brownfield Grant and in seeking out and maximizing any other potential grant opportunities to address the Existing Contamination.

(b) *City Payment of Reimbursable Remediation Costs.* For purposes of this Section C. 1., "Reimbursable Remediation Costs" means the costs reasonably incurred by Developer pursuant to the contract awarded under Section B.1(d) to implement the Remediation Plans, to the extent those costs are not covered by the Brownfield Grant or any other grants that may be awarded for managing materials or remediation of the Existing Conditions. The City shall be responsible to pay Reimbursable Remediation Costs in accordance with this Section C.1.

(c) *Request for Payment:* As work on the Project and Public Improvements progresses, Developer may make requests to the City for payment of Reimbursable Remediation Costs not more than once per month. Developer's application for reimbursement shall be submitted to the City Planning Director. Developer's application shall include: (1) a breakdown of all contractors, subcontractors and material suppliers performing work for which payment is requested, an itemization of the work performed, and copies of all supporting invoices from all contractors, subcontractors and material suppliers requesting payment, together with a certification by Developer and Developer's engineer that the requested application is true and correct and that the requested payments are being made in accordance with the standards and requirements of the construction contract; (2) written verification from the Environmental Consultant that the work for which reimbursement has been requested is complete and conforms to the Remedial Action Plans; and, (3) valid lien waivers from all contractors, subcontractors and material suppliers performing work or providing material for which reimbursement is requested. Within forty-five days after submittal of a complete application to the City Planning Director demonstrating entitlement to reimbursement under this Section, and subject to approval by the City Planning Director that the payment request is in conformity with the provisions of this Agreement, the City shall make its reimbursement payment to the contractors, subcontractors and material suppliers for whom payment is requested.

2. Municipal Revenue Obligation for Public Improvement Costs. Following the completion and City acceptance of the Public Improvements, Developer may provide to the City a written request for issuance of a Municipal Revenue Obligation in the amount of the actual cost of constructing the Public Improvements pursuant to the contract awarded under Section B.1(d) of this Agreement. Developer's application shall include: (1) a breakdown of all contractors, subcontractors and material suppliers who were engaged in constructing the Public Improvements, an itemization of the work performed, and copies of all supporting invoices from all contractors, subcontractors and material suppliers who were engaged in constructing the Public Improvements, together with a certification by Developer and Developer's engineer that the request for issuance of the Municipal Revenue Obligation is true and correct; and (2) documentation demonstrating the interest rate Developer will pay on Developer's financing of the cost of constructing the Public Improvements. Within forty-five days after submittal of a complete written request for issuance of the Municipal Revenue Obligation with the required certification and documentation, the City shall issue a Municipal Revenue Obligation to Developer, in the principal amount of the actual cost of constructing the Public Improvements so demonstrated, and in the form attached hereto as Attachment C, under the following terms and conditions:

(a) The Municipal Revenue Obligation shall bear interest at the lesser of five percent per annum or the rate Developer will pay on Developer's financing of the cost of constructing the Public Improvements.

(b) Any payment on the Municipal Revenue Obligation which is due on any Payment Date shall be payable solely from and only to the extent that the City has received as of such Payment Date Actual Tax Increment, and such Actual Tax Increment has been appropriated by the Common Council to payment of the Municipal Revenue Obligation.

(c) For purposes of the Municipal Revenue Obligation, a "Payment Date" shall mean each of the Scheduled Payment Dates set forth on a schedule to be prepared by the City and attached to the Municipal Revenue Obligation when issued. The scheduled payment dates shall be prepared such that the payments on the Municipal Revenue Obligation are amortized over fifteen years. Notwithstanding the foregoing, the City may prepare the schedule in a manner that reduces payments to the extent reasonably necessary to avoid projected deficits in the District fund balance, may use negative amortization to avoid such deficits, and may extend the payments beyond 15 years to avoid such deficits. When projecting City debt service payments needed to fund District obligations, for purposes of preparing the schedule, the City shall consider only District obligations incurred before the date of this Agreement, obligations incurred by the City pursuant to this Agreement, and additional obligations incurred to fund those projects described in Attachment F. On each of the Payment Dates, the City shall pay to Developer the Actual Tax Increment, up to the Scheduled Payment Amount shown on the schedule attached to the Municipal Revenue Obligation, together with such additional amounts, if any, deferred from prior years as may be payable on the Payment Date as provided under the terms of the Municipal Revenue Obligation, that has been appropriated for that purpose by the Common Council in accordance with the requirements for revenue obligations.

(d) The City covenants and agrees that Actual Tax Increment held by the City as of a given Payment Date shall not be appropriated for any other use, if not appropriated for the Municipal Revenue Obligation due as of such Payment Date, until the City has paid the Municipal Revenue Obligation payment due on the Payment Date in that year (including the Scheduled Payment Amount plus any additional amounts deferred from prior years and payable on that Payment Date), or until said Municipal Revenue Obligation has been paid. The District shall not be terminated until the Municipal Revenue Obligation has been paid, or until the District must be terminated by law, whichever first occurs.

D. CONDITIONS PRECEDENT TO AGREEMENT OBLIGATIONS.

All of the following must occur before either party's obligations under this Agreement shall become effective.

1. The City and Developer must approve and execute this Agreement.

2. Developer must acquire fee simple title to the Phase 1 Land in accordance with the Purchase Agreement.

3. Developer must deliver to the City the letter of credit required by Section B.1.(l)(1) of this Agreement.

If the events described in this Section D are not satisfied by August 1, 2024, then this Agreement shall be null and void.

E. **REPRESENTATIONS AND WARRANTIES.**

1. Authorization. Developer warrants that Developer's execution, delivery and performance of this Agreement have been duly authorized and do not conflict with, result in a violation of, or constitute a default under any provision of Developer's articles of organization or membership agreements, or any agreement or other instrument binding upon Developer, or any law, governmental regulation, court decree, or order applicable to Developer or to the Property.

F. **GENERAL CONDITIONS.**

1. No Vested Rights Granted. Except as provided by law, or as expressly provided in this Agreement, no vested rights to develop the Project shall inure to Developer by virtue of this Agreement. Nor does the City warrant that Developer is entitled to any City approvals required for development of the Property or construction of the Project as a result of this Agreement.

2. Binding Effect / Assignment. The obligations of Developer and the City under this Agreement shall be binding on their respective grantors, successors and assigns. Developer may not assign its benefits or obligations under this Agreement without the express prior written approval of the City, except that Developer may assign its interest in this Agreement to (i) a lender in connection with the financing of the construction of the Public Improvements or the Project, (ii) an Affiliate of Developer.

3. No Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by the City, the RDA and Developer, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults. Either party's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the other party hereto.

4. Amendment/Modification. This Agreement may be amended or modified only by a written amendment approved and executed by the City, the RDA and Developer.

5. Remedies upon Default. A default is defined herein as a party's breach of, or failure to comply with, the terms of this Agreement and the failure to cure such breach within thirty (30) days after the date of written notice from the non-defaulting party. The parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses under this Agreement. Rights and remedies are cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of other rights or remedies. Remedies include,

but are not limited to, drawing on the letters of credit, and charging Developer, on all amounts due to the City not paid by the due date, interest at the rate of 2 percent over the rate then payable by the City under the City Borrowing, from the due date until the date the unpaid amounts are paid in full.

6. Entire Agreement/Appendices Incorporated. This written Agreement and the attachments hereto, and the Purchase Agreement, shall constitute the entire Agreement between Developer and the City as of the date hereof.

7. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term, or provision was never part of the Agreement.

8. Immunity. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable law.

9. Indemnification. Developer, and its successors and assigns, shall indemnify, hold harmless and defend the City and the RDA and their officers, agents and employees from any and all liability suits, actions, claims, demands, losses, costs, damages and expenses or liabilities of every kind and description, including attorney costs and fees, for claims of any character including liability and expenses in connection with the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained by any persons or property on account of or arising out of the construction of the Project or the Public Improvements occasioned wholly or in part by any act or omission on Developer's part or on the part of its agents, contractors, subcontractors, invitees or employees, at any time occurring on, at or in the Property or the Riverfront Site, except as are a result of the gross negligence or willful misconduct of any officer, agent or employee of the City or the RDA. The City and the RDA shall be entitled to appear in any proceedings to defend themselves against such claims, and all costs, expenses and reasonable attorney fees incurred by the City or the RDA in connection with such defense shall be paid by Developer to the City or the RDA, as the case may be. The foregoing indemnity provisions shall survive the cancellation or termination of this Agreement as to all matters arising or accruing prior to such cancellation or termination and the foregoing indemnity shall survive in the event the City or the RDA elect to exercise any of the remedies as provided under this Agreement following default hereunder. Developer shall provide insurance coverage in compliance with the City's Contract Insurance Requirements attached as Attachment D.

10. Notice. Any notice required or permitted by this Agreement shall be deemed effective given in writing and personally delivered or mailed by U.S. Mail as follows:

To Developer:	Stoughton Riverfront Development, LLC 701 E. Washington Ave., Ste. 105 Madison, WI 53703 Attention: Curt Brink Telephone: 608.575.4845 Email: curtbrink@hotmail.com
Developer's Attorney:	Carlson Black O'Callaghan & Battenberg LL 222 West Washington Avenue, Suite705 Madison, WI 53703 Attn: Daniel A. O'Callaghan Telephone: 608.888.1685 Email: dan.ocallaghan@carlsonblack.com
To the City:	Finance Director City of Stoughton 207 S. Forrest Street Stoughton, WI 53589 Telephone: 608.873.6691 Email: DEhlinger@cityofstoughton.com
City Attorney	Stafford Rosenbaum LLP 222 W. Washington Avenue, Suite 900 P.O. Box 1784 Madison, WI 53701-1784 Attn: Matthew P. Dregne Telephone: 608.259-2618 Email: mdregne@staffordlaw.com

11. Recordation. The City may record a copy of this Agreement, or a memorandum thereof, in the office of the Dane County Register of Deeds.

12. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party arising out of this Agreement shall be deemed to be proper only if such action is commenced in Circuit Court for Dane County unless it is determined that such Court lacks jurisdiction. Developer hereby consents to personal jurisdiction in Dane County. Developer also expressly waives the right to bring such action in, or to remove such action to, any other court whether state or federal, unless it is determined that the Circuit Court for Dane County lack jurisdiction.

13. Ratification. Developer hereby approves and ratifies all actions taken to date by the RDA and the City, their officers, employees and agents in connection with the District, and in connection with the zoning and other approvals relating to the Phase 1 Property and the Project.

14. Compliance with Laws. Developer shall comply with all federal, state and local laws with respect to the Phase 1 Property, the Project, and the Public Improvements, including but not limited to laws governing building and construction, the environment, nondiscrimination, and employment and contracting practices, to the extent they are applicable.

15. No Partnership. The City and the RDA do not, in any way or for any purpose, become a partner, employer, principal, agent or joint venturer of or with Developer.

16. Good Faith. Both parties to this Agreement shall exercise good faith in performing any obligation that party has assumed under the terms of this Agreement including, but not limited to, the performance of obligations that require the exercise of discretion and judgment.

17. Applicable Law. This Agreement shall be construed under the laws of the state of Wisconsin.

18. No Private Right or Cause of Action. Nothing in this Agreement shall be interpreted or construed to create any private right or any private cause of action by or on behalf of any person not a party hereto.

19. Effective Date. This Agreement shall be effective as of the date and year first written above.

20. Term. Except as provided in Section D, this Agreement shall continue in full force and effect until such time as Developer's obligations under Section B of this Agreement, and the City's obligations under Section C of this Agreement, have been fully satisfied, at which point this Agreement shall terminate and be of no further force or effect. At that time, if this Agreement has been recorded the parties shall jointly execute and record a release of the Agreement.

21. Construction of Agreement. Each party participated fully in the drafting of each and every part of this Agreement. This Agreement shall not be construed strictly in favor of or against either party. It shall be construed simply and fairly to each party.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first set forth above, and by so signing this Agreement, certify that they have been duly authorized by their respective entities to execute this Agreement on their behalf.

CITY:

CITY OF STOUGHTON
Dane County, Wisconsin

By_____
Timothy Swadley, Mayor

ATTEST:

_____
Candee Christen, City Clerk

CITY OF STOUGHTON REDEVELOPMENT AUTHORITY

By_____
Peter Manley, Chair

DEVELOPER:
STOUGHTON RIVERFRONT DEVELOPMENT, LLC

By_____
Curt Brink, Manager

Provision has been made to pay the liability that will accrue under this Agreement:

Countersigned:

_____
David Ehlinger, Finance Director

_____
Date

Approved as to Form:
Stafford Rosenbaum LLP

_____
By: Matthew P. Dregne
City Attorney

Attachments [Intentionally omitted in this exhibit.]:

A	Certified Survey Map
B	[Intentionally Left Blank]
C	Form of Municipal Revenue Obligation
D	City Contract Insurance Requirements
E	[Intentionally Left Blank]
F	Additional District Obligations
G	Material Management and Interim Remediation Plan (the "Stoughton Riverfront Development Plan")
H	Remedial Action Plan (the "Stoughton Public Works Garage Plan")
I	July 20, 2022 Letter from Wisconsin Department of Natural Resources